

REMARKS

In the instant application, claims 1-48 are pending and have been made the subject of a Restriction Requirement.

I. Restriction Requirement Under 35 U.S.C. § 121

The Examiner asserts that Restriction to one of the following inventions is required under 35 U.S.C. § 121:

- I. Claims 1-44 are, drawn to compounds and compositions where A is N; n is 1; m is 1 and at least one of pair of R variables must be O or S, classified in class 514 and 544, in various subclasses.
- II. Claims 1-44 are, drawn to compounds and composition not provided for by Group I, i.e., where R variables are other than O or S, classified in class 514 and 544, in various subclasses.
- III. Claims 1-44 are, drawn to compounds and compositions where A is carbon and at least one of pair of R variables is O, classified in class 514 and 544, in various subclasses.
- IV. Claims 1-44 are, drawn to compounds and compositions where A is carbon and at least one of pair of R variables is S, classified in class 514 and 544, in various subclasses.
- V. Claims 1-44 are, drawn to compounds and compositions containing other rings where A is carbon and at least one of pair of R variables forms and oxo, classified in class 514 and 544, in various subclasses.
- VI. Claims 1-44 are, drawn to compounds and composition containing other rings where A is carbon and none of the R variables form an oxo group, classified in class 514 and 544, in various subclasses.
- VII. Claims 45-48 are, drawn to use employing compounds and composition of Groups I-VI, classified in class 514, in various subclasses.

Restriction Requirement, pages 2-3.

Applicants respectfully traverse the instant Restriction Requirement.

First, Applicants submit that the aggregation of the divided Groups I-VII does not make Applicants' invention whole. That is, some subject matter of claims 1-48 is not covered by any of the Groups I-VII. For example, none of the Groups I-VII covers compounds and compositions where A is N, and one of n and m is not 1. Further, the scope of each of Groups I-VII is not clear. For instance, claims 13 and 16 are directed to method of use of Applicants' compounds instead of compounds and compositions. Nevertheless, they are divided into Groups I-VI rather than VII. Also the "other rings" described in Groups V and VI is not defined at all. Thus, the scope of Groups V and VI is not clear and appears to overlap with the scope of Groups III and IV. Thus, the Examiner's Restriction Requirement is not clearly delineated.

Furthermore, Applicants submit that the Examiner has not satisfied the requirements for the Restriction Requirement among Groups I-VII. 35 U.S.C. § 121 states that "[I]f two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions..." Furthermore, 37 C.F.R. § 1.141 states that "[T]wo or more independent and distinct inventions may not be claimed in one national application..." Thus, the

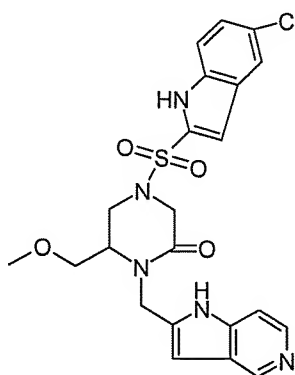
Examiner has to prove that the inventions in the instant application are both independent and distinct to issue a Restriction Requirement. In the Office Action, the Examiner only proffers that the inventions are distinct. The Examiner, however, provides no explanation whatsoever why the inventions in the instant application are independent. Therefore, the Examiner has not met her burden to prove that the Restriction Requirement is proper.

In view of the aforesaid, Applicants respectfully request reconsideration and withdrawal of the restriction requirement between the claims encompassed by these groups.

II. Provisional Election

To comply with the Examiner's Restriction Requirement, Applicants provisionally elect, with traverse, Group I, Claims 1-44, drawn to compounds and compositions where A is N; n is 1; m is 1 and at least one of pair of R variables must be O or S.

To comply with the Examiner's Election of Species Requirement, Applicants provisionally elect the species of the compound of Example 1116, 4-(5-chloro-1H-indole-2-sulfonyl)-6-methoxymethyl-1-(1H-pyrrolo[3,2-c]pyridin-2-ylmethyl)-piperazin-2-one, having the following chemical formula,



a compound wherein:

A is	N,
n is	1,
m is	1,
R ₁ is	H,
R _{1a} is	H,
R ₄ is	H,
R _{4a} is	H,
R ₂ is	-CH ₂ -O-CH ₃ ,
R _{2a} is	H,
R ₃ and R _{3a} taken together form	O,
G ₁ is	L ₁ -Cy ₁ ,

L₁ is SO₂,
Cy₁ is 5-chloro-1H-indolyl,
G₂ is L₂-Cy₂,
L₂ is CH₂, and
Cy₁ is 1H-pyrrolo[3,2-c]pyridin-2-yl.

Applicants submit that claims 1-4, 7-9, 12, 15, 19-28, 30, 32, 35 and 44 read on the elected species.

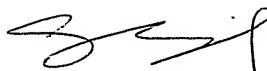
Applicants submit that once the compounds of the present invention are found to be novel, then the other Groups defined by the Examiner where appropriate should be subject to rejoinder, pursuant to linking claim practice.

Applicants also affirm their right to file one or more divisional applications with respect to any other non-elected subject matter.

III. In Conclusion

The Commissioner is hereby authorized to charge the fee required and any additional fees that may be needed to Deposit Account No. **18-1982** in the name of Aventis Pharmaceuticals Inc.

Respectfully submitted,



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